



Paper No. 6
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In re Application of
Shi et al.
Application No. 09/236,113
Filed: January 25, 1999
Attorney Docket No. 1581.0250001
For: Cathode Arc Source and Graphite Target

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: DECISION REFUSING
: STATUS UNDER
: 37 CFR 1.47(a)
:
:

This is a decision on the petition under 37 CFR 1.47(a), filed September 13, 1999.

The petition is **DISMISSED**.

Any request for reconsideration of this decision must be submitted within TWO (2) MONTHS from the mail date of this decision. Extensions of time under 37 CFR 1.136(a) are permitted. Any response should be entitled "Request for Reconsideration of Petition Under 37 CFR 1.47(a)" and may include an oath or declaration executed by the inventor. **Failure to respond will result in abandonment of the application.**

The above-identified application was filed on January 25, 1999 without an executed declaration. Accordingly, on February 12, 1999, a "Notice to File Missing Parts of Application" was mailed, requiring an executed declaration and a surcharge for its late filing. In response, on Monday, September 13, 1999, the instant petition, a petition for a five month extension of time, and a declaration signed by only three of the four inventors was filed.

A grantable petition under 37 CFR 1.47(a) requires

- (1) a petition including proof of the pertinent facts establishing that the joint inventor(s) refuses to join, or cannot be found or reached after diligent effort,
- (2) a proper oath or Declaration executed by the available joint inventor(s),
- (3) the fee of \$130 as specified in 37 CFR § 1.17(h), and
- (4) the last known address of the omitted inventor(s).

As to item (1), unless the non-signing inventor is presented with a copy of the application papers, he cannot attest that he has "reviewed and understands the application papers" and therefore cannot not sign a declaration. Specifically, an inventor cannot in good faith sign a declaration stating "I have reviewed and understand the contents of the above identified specification, including the claims" when the non-signing inventor has not been supplied with a copy of the application. Applicant has failed to establish that applicant was provided with a copy of the application papers. Accordingly, Rule 47 applicant has failed to show or provide proof that the inventor has refused to sign the declaration. It is not sufficient that applicant made the papers available. See MPEP, Section 409.03(d).


Further correspondence with respect to this matter should be addressed as follows:

By mail: Commissioner for Patents
Box DAC
Washington, D.C. 20231

By facsimile: (703) 308-6916
Attn: Office of Petitions

By hand: Office of Petitions
2201 South Clark Place
Crystal Plaza 4, Suite 3C23
Arlington, VA 22202

Telephone inquiries should be directed to Petitions Attorney Steven Brantley at (703) 306-5683.


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